

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:06-CR-279-D
No. 5:12-CV-534-D

TONY TAYLOR,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

The court has reviewed the government's response of November 18, 2013 [D.E. 106]. The court treats Taylor's motion as one seeking relief under 28 U.S.C. § 2241.

The court agrees that Alleyne v. United States, 133 S. Ct. 2151 (2013), does not apply retroactively to Taylor's case. See, e.g., United States v. Gasca, No. 13-3227, 2013 WL 6153506, at *1 (10th Cir. Nov. 25, 2013) (unpublished); United States v. Redd, 735 F.3d 88, 91–92 (2d Cir. 2013) (per curiam); United States v. Stewart, No. 13-6775, 2013 WL 5397401, at *1 n.* (4th Cir. Sept. 27, 2013) (per curiam) (unpublished); In re Payne, 733 F.3d 1027, 1029–30 (10th Cir. 2013); In re Kemper, 735 F.3d 211, 212 (5th Cir. 2013) (per curiam); Simpson v. United States, 721 F.3d 875, 876–77 (7th Cir. 2013). Thus, the court denies relief to Taylor based on Alleyne.

As for Taylor's request for relief under United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc), the court directs the government to state its position on Taylor's request for relief under section 2241 and Simmons. Cf. [D.E. 106] 8–9. The government's response is due no later than December 20, 2013. Taylor may file any response by January 10, 2014.

SO ORDERED. This 9 day of December 2013.


JAMES C. DEVER III
Chief United States District Judge